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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,637	10/17/2003	John A. Ambrose	1059-3	1960

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JACKIE JAY SCHWARTZ
1350 Broadway
Suite 1510
NEW YORK, NY 10018

EXAMINER	
REIDEL, JESSICA L	
ART UNIT	PAPER NUMBER
3766	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/688,637	AMBROSE ET AL.	
	Examiner	Art Unit	
	Jessica L. Reidel	3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 October 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) *1-15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *16-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 October 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Acknowledgement is made of Applicant's Amendment, which was received by the Office on October 30, 2006. Claims 1-15 have been withdrawn. Claims 16-19 are pending.

Drawings

2. In view of the response filed October 30, 2006, the objections to the drawings, made in the Office Action of April 28, 2006, have been withdrawn. The Examiner has accepted the drawings submitted on October 30, 2006.

Specification

3. In view of the response filed October 30, 2006, the objections to the specification, made in the Office Action of April 28, 2006, have been withdrawn. The Examiner has accepted the amended abstract and portions of the specification submitted on October 30, 2006.

Claim Objections

4. In view of the response filed October 30, 2006, the objections to the claims, made in the Office Action of April 28, 2006, have been withdrawn.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taha et al. (U.S. 6,564,090) (herein Taha). As to Claim 16, Taha expressly discloses a method of determining if a user (i.e. a patient 14) is experiencing a myocardial infarction upon perceiving at least one symptom of a myocardial infarction (such as chest pain) using an ECG acquisition apparatus 16 comprising: comparing an index ECG and/or subsequent ECGs, read as "data representing current bodily activity" with a baseline ECG, read as "data representing a user-specific baseline ECG" for determining if the data representing the current bodily activity deviates from the data representing the user-specific baseline ECG by a predetermined deviation value; and notifying a user (i.e. a clinician and/or physician) via display 30, upon detecting the deviation, that the at least one symptom is/are indicative of a myocardial infarction (see Taha Abstract, column 4, lines 5-63, column 5, lines 16-49 and columns 6-9).

Taha expressly discloses that the ECG acquisition apparatus 16 comprises a plurality of electrodes 16 that are positioned at predetermined positions on the body of the patient for

acquiring the data representing current bodily activity. Taha further specifies that a baseline ECG is acquired from the patient 14 during a stable cardiac period which can be several days or even several years prior to the patient. Although not specified by Taha, it would have been obvious to use the ECG acquisition apparatus 16 and its associated electrodes 16 for recording both the data representing a user-specific baseline ECG value and the data representing current bodily activity, since using the same device to perform the same type of measurement for comparison purposes would provide consistency and a more accurate comparison as well known to one having ordinary skill in the art and further since Taha specifies that the ECG acquisition apparatus 16 is capable of both transceiving and receiving information from the ECG management system, read as memory unit 22 and further since the ECG acquisition apparatus stores acquired ECGs in its own memory unit 32 (see Taha columsn 4-5). It is inherent, or at least obvious to one having ordinary skill in the art, that when the user-specific baseline ECG value is recorded years before the patient 14 perceives at least one symptom of a myocardial infarction (such as chest pain) that the apparatus 16 would be removed and then reapplied to the body of the patient 14. It is furthermore inherent, or at least obvious to one having ordinary skill in the art that the ECG acquisition apparatus 16 comprises an activation device to activate the recording of the data and/or to power up the device as well known in the art of medical instrumentation.

8. As to Claim 17, Taha expressly discloses that the step of comparing includes comparing an ST-segment of the data representing current bodily activity (i.e. from the index ECG or subsequent ECGs) with an ST-segment of the data representing the user-specific baseline ECG (see Taha column 7, lines 4-59 and column 9, lines 9-58).

9. As to Claim 18, Taha expressly discloses that method further comprises the step of notifying a user (i.e. a clinician or physician) via display 30 that the data representing current bodily activity (i.e. from the index ECG or subsequent ECGs) does not deviate from the data representing the user-specific baseline ECG by a predetermined deviation value (see Taha column 7, lines 4-59 and column 9, lines 9-58).

10. As to Claim 19, Taha discloses the claimed invention except for the steps further comprising lying the patient down in a supine position and elevating the user's legs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Taha, to include steps further comprising lying the patient down in a supine position and elevating the user's legs since it was known in the art that lying a patient down during a suspected myocardial infarction decreases the amount of oxygen being used by the body's extremities and may prolong the amount of time the patient receives oxygen to vital organs (such as the heart itself and the brain). In addition, it was known in the art that lying a patient down and elevating the patient's legs during a suspected myocardial infarction forces blood located in the extremities back to the heart quicker than would be possible without elevating the legs, because when a patient is experiencing a myocardial infarction it is beating irregularly and in an uncoordinated fashion decreasing its ability to circulate blood through the body. The modified Taha reference discloses the claimed invention as discussed above except it is not specified that the legs be elevated at an angle substantially equal to 30 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to elevate the legs at an angle substantially equal to 30 degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Response to Arguments

11. Applicant's arguments with respect to claims 16-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Albrecht et al. (U.S. 6,047,206) teaches that the criteria for what constitutes a significant change in an ST segment may be predetermined (i.e., universally applicable) or patient-specific (i.e., a departure from previously recorded patterns for the patient).

Rowlandson (U.S. 2002/0087055) discloses the use of a serial comparison program used to compare each currently recorded ECG with a previously recorded ECG for the same patient for automatically detecting a new left bundle branch block and then issuing an alert for the purpose of accelerating treatment for acute myocardial infarction.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jessica L. Reidel whose telephone number is (571) 272-2129. The Examiner can normally be reached on Mon-Thurs 8:00-5:30, every other Fri 8:00-4:30.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jessica L. Reidel 01/05/06
Examiner
Art Unit 3766

Robert E. Pezzuto
Supervisory Patent Examiner
Art Unit 3766